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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,909	02/14/2000	ANNIE MEINIEL	065691/0179	5643

22428 7590 01/03/2005

FOLEY AND LARDNER
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EXAMINER

CHERNYSHEV, OLGA N

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 01/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/462,909

Applicant(s)

MEINIEL ET AL.

Examiner

Olga N. Chernyshev

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 13, 16, 17 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 13, 16-17 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

1. Claims 1, 3, 5, 6, 8, 16 and 17 have been amended and claims 11 and 20 have been cancelled as requested in the amendment of Paper filed on October 20, 2004. Claims 1-6, 8, 13, 16-17 and 22 are pending in the instant application.

Claims 1-6, 8, 13, 16-17 and 22 are under examination in the instant office action.

2. The Text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Any objection or rejection of record, which is not expressly repeated in this action has been overcome by Applicant's response and withdrawn.

4. Applicant's arguments filed on October 20, 2004 have been fully considered but they are not deemed to be persuasive for the reasons set forth below.

Claim Rejections - 35 USC § 112

5. Claims 2-6 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for reasons of record in section 10 of Paper mailed on May 20, 2004. Briefly, claims 2 and 4 are vague and indefinite because the relationship of "SEQ ID NOS: 50-59" or "SEQ ID NOS: 65-88" and SEQ ID NO: 9 is not obvious and cannot be determined from the claim or the instant specification. Claims 3 and 5-6 are indefinite for being dependent from indefinite claim. Applicant is advised that providing explanation that "SEQ ID NOS: 50-59 and SEQ ID NOS: 65-88 are sub-genera of the genus of SEQ ID NO: 9" does not obviate this ground

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of rejection because the claims, as written, do not allow definitive interpretation of the structure of the claimed subject matter.

Claim Rejections - 35 USC § 102

6. Claims 1-6, 8, 13, 16-17 and 22 stand rejected under 35 U.S.C. 102(b) as being anticipated by Gobron et al. for reasons of record in appropriate sections of the previous communications of record.

Applicant submits that “the open language describing the structure of the peptides” have been removed by the amendment (last paragraph at page 4 of the Response). This argument has been fully considered but is not deemed to be persuasive because, as fully explained previously, the peptide of SEQ ID NO: 9, as recited in claim 1, has terminal ends “Y” and “Z”, “wherein Y and Z comprise”, emphasis added, certain recited molecular embodiments. Therefore, there is no recitation in the claim that precludes the peptide of SEQ ID NO: 9 to comprise more than “amino acid chains consisting of 0-6 amino acids”. Furthermore, Applicant is reminded that “having the following amino acid sequence”, as in claim 16, is considered an “open” language. As such, the claimed subject matter is fully anticipated by Gobron et al.

New grounds of rejections necessitated by amendment

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 6, as amended, are vague and indefinite for recitation "peptide is the following amino acid sequence". Amino acid sequence is a property that is characteristic of a peptide structure and, therefore, it is not clear how a peptide could become a sequence. Applicant is advised that recitation of "a peptide consisting of an amino acid sequence" would obviate this ground of rejection.

Conclusion

8. No claim is allowed.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga N. Chernyshev whose telephone number is (571) 272-0870.

The examiner can normally be reached on 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda G. Brumback can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Certain papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax center located in Crystal Mall 1 (CM1). The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). NOTE: If Applicant *does* submit a paper by fax, the original signed copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers.

Official papers filed by fax should be directed to (703) 872-9306. If this number is out of service, please call the Group receptionist for an alternative number. Faxed draft or informal communications with the examiner should be directed to (571) 273-0870. Official papers should NOT be faxed to (571) 273-0870.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Olga N. Chernyshev, Ph.D.
Primary Examiner
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December 27, 2004